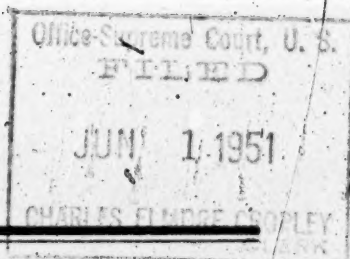


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SUPREME COURT, U. S.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

—
No. 146
—

ALABAMA PUBLIC SERVICE COMMISSION, ET AL,
Appellants,

v.

SOUTHERN RAILWAY COMPANY
—

Appeal from the United States District Court for the Middle
District of Alabama.
—

SIDNEY S. ALDERMAN,
CHARLES CLARK,
Attorneys for Appellee,
Southern Railway Company.

IN THE
Supreme Court of the United States

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ALABAMA PUBLIC SERVICE COMMISSION, ET AL.,
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v.

SOUTHERN RAILWAY COMPANY

**Appeal from the United States District Court for the Middle
District of Alabama.**

Comes now, in due season, Southern Railway Company, appellee in the above-entitled cause, and moves this Honorable Court to stay the issuance of the mandate from this Court to the United States District Court for the Middle District of Alabama by enlarging the time over and above the period of twenty-five days from the date the judgment was entered, to-wit, on May 21, 1951, sufficiently to permit appellee to take appropriate steps in the state courts of Alabama for determination and adjudication of its rights in the subject matter of this cause. In support of this motion, appellee respectfully shows:

The judgment of this Court was entered in this cause on May 21, 1951, reversing the judgment of the District Court.

On May 25, 1951, appellee filed with this Court its motion for an order providing that the mandate of this Court require the District Court to retain jurisdiction and continue in effect its injunctive decree (R. 69) pending appellee's resort to the state courts of Alabama.

On May 25, 1951, appellee's counsel forwarded a copy of said motion by United States mail to attorneys of record for appellants at Montgomery, Ala. This Court has not acted on appellee's motion. The date for adjournment of the present term of this Court is near at hand.

Since the judgment of this Court was rendered, appellee has filed with appellant, Alabama Commission, its further petition, supplementing and amending its original petition in said Commission Docket No. 12221. In such petition appellee seeks an order from said Commission authorizing appellee to withhold reestablishing operations of Trains No. 11 and No. 16 pending consideration and disposition of the appeal and proceedings thereon which appellee is now initiating in the Circuit Court of Montgomery County, Alabama. Defendant Commission has not yet acted on appellee's said petition, so far as appellee is advised at this time.

Necessarily defendant Commission must have sufficient time, over which appellee has no control, to prepare the record, being the testimony and documentary evidence heretofore introduced before it upon the hearings in Docket No. 12221, certify to the same and transmit it to the Circuit Court of Montgomery County, Alabama, as provided in the statutes of Alabama, for consideration and determination of appellee's appeal from and its motion for supersedeas or stay of defendant Commission's order of January 9, 1950, denying application to discontinue operation of Trains No. 11 and No. 16. The state statute provides that the record is to be transmitted to the Circuit Court "within thirty days after the perfecting of the appeal as aforesaid, and sooner if practicable, . . . "

Unless appellee's motion is granted it will necessarily be prejudiced immediately upon the receipt of the mandate of this Court in the District Court whereupon the District Court will vacate its injunctive decree heretofore issued in this cause and thereby leave appellee without protection pending action by the state court upon appellee's appeal to the Circuit Court of Montgomery County, Alabama, and its prayer therein for a supersedeas or stay of the defendant commission's order involved in this cause.

WHEREFORE, Southern Railway Company, appellee in this cause, moves the Court to stay the issuance of its mandate for such reasonable time as will permit appellee to perfect its appeal to the Circuit Court of Montgomery County and there assert its rights in keeping with the decision of this Court in its opinion rendered on May 21, 1951.

Respectfully submitted,

SIDNEY S. ALDERMAN,
CHARLES CLARK,
Attorneys for Appellee,
Southern Railway Company.